IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15827 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMITKUMAR ISHWARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15827 of 2004

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 16th of July, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 16th of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration 2 criminal cases registered against the petitioner, one at Naroda Police Station on May 23, 2004 and second at Prohibition Police Station, Eastern Zone on July 12, 2004 under the Bombay Prohibition Act, whereby the petitioner was found in possession of prohibited liquor. The detaining authority thoroughly examined the investigation papers in both the above crimes registered against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting the country liquor, therefore, the petitioner was a bootlegger within the meaning of the PASA Act. The detaining authority also came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order and affecting adversely the public health, were required to be prevented forthwith. The detaining authority also considered other steps which may be taken against the petitioner in general law, but came to the conclusion that those remedies were likely to take time. The detaining authority came to the conclusion that there was no other alternative except to pass orders of detention under the PASA Act against the petitioner. Therefore, the detaining authority passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Ms.Banna Dutta for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority, as placed on record, was also considered.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was sufficient material placed before the detaining authority to come to the conclusion that by the activities of the petitioner the public order was disturbed and public health was adversely affected.

6. To arrive at the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority is also expected to draw a clear lime between the cases falling under "breach of law and order" and breach of public order.

7. Undoubtedly, in the present case,the detaining authority relied upon two cases registered against the petitioner and investigation carried out in these cases. It is clear that the cases against the detenu are filed on the ground that the detenu was dealing in liquor. It is also necessary to consider fall out, reach and impact of the activities of the petitioner to come to the conclusion that whether potentiality of the activities was capable of disturbing the public order. While going through the investigating papers placed on record, it clearly appears that at the most the cases filed against the petitioner and the investigation carried out, may be termed as breach of law, for which the petitioner may be tried and may be punished, if found guilty, but the investigation in those two cases do not reveal anything to infer that the activities of the petitioner were hazardous and danger to society at large or to the section of the society or adversely affecting the public health. The act, therefore, constituting the offence cannot be said to have affected the even tempo of the life of the community and have no bearing at all on the question of maintenance of public order. The subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by Police Commissioner, Ahmedabad City, on 16th of July 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Amitkumar Ishwarbhai Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS

permitted.

(J.R. Vora, J.)

p.n.nair